IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6984 OF 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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BALDEVBHAI MANILAL PATEL - Petitioner(s)

Versus

LIFE INSURANCE CORPORATION OF INDIA & ANR. - Respondent(s)

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Appearance :

Shri Chirag Patel for Shri B.S. Patel for Petitioner(s).

Shri Biju Joshi for Shri H.M. Bhagat for Respondent No.1.

None for Respondent No. 2 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

ORAL JUDGMENT

By this Writ Application, the petitioner seeks quashing of the order dated 23rd February, 1994 passed by the Senior Divisional

Manager, Life Insurance Corporation of India Limited whereunder the agency of the petitioner had been terminated in terms of Regulation 16 (i)(a)(b) of the Life Insurance Corporation of India (Agents) Regulations, 1972 with a further penalty of forfeiture of commission with immediate effect on the ground that the petitioner had committed breach of Regulation 8(2)(b) of the Regulations, 1972.

2. The petitioner, Baldevbhai Manilal Patel, was appointed as an agent of the Life Insurance Corporation of India Limited with effect from 5th July, 1980. During the course of business and currency of the agency, the petitioner obtained insurance for one (late) Shri Babulal N. Patel, who expired on 3rd July, 1991 at the age of 61 years.

3. The Life Insurance Corporation issued a notice to the petitioner to show cause that in view of the misconduct by the petitioner in not providing true and correct information, why the agency be not cancelled. The petitioner filed his reply on 29th June, 1993 and thereafter, he was heard. It would be worth mentioning that no witnesses were examined by either side and the case hinged on the documentary evidence only. *Vide* the impugned order dated 23rd February, 1994, the Senior Divisional Manager, Life Insurance Corporation of India observed that the deceased Babulal N. Patel earlier also applied for insurance, but, later on, withdrew the proposal. He also

observed that on an earlier occasion, the said Babulal M. Patel was treated for certain ailments and as the ailments, etc. were not brought to the notice of the authorities of the Corporation, this inaction on the part of the petitioner amounted to misconduct.

4. Shri Chirag B. Patel, learned Counsel for the petitioner, has made a severe attack on the order terminating the agency, submitting, *inter alia*, that the documents, on which strong reliance was placed by the Corporation, despite request of the petitioner, were not supplied to him, that the petitioner did not know about the earlier proposal and withdrawal of the same and that the petitioner had no occasion to know that the deceased on the earlier occasions had suffered with certain ailments and was treated by some doctor. His submission is that despite requests, the documents relating to treatment and earlier withdrawal of the proposal were not supplied to him, which had given a serious dent to his defence.

5. Shri Biju Joshi, learned Counsel for the respondent-Corporation, however, submits that as the file containing all the details and evidence is misplaced or lost, it was not possible for respondent No.1 to supply the documents. His submission is that according to Regulation 8, an agent is required to make appropriate inquiry and only then, insure the life. His further submission is that the agency of the petitioner was to

come to an end in the year 1994 and therefore, grant of this petition would not help and assist the petitioner.

6. The very basic principle of natural justice is that one cannot be condemned unheard or without providing appropriate and proper opportunity to lead his defence. It would be trite to say that if somebody raises an allegation that the other party had committed some misconduct and for levelling such allegations, they are relying upon certain documentary or oral evidence, then, such evidence is required to be provided to the miscreant so that he can raise his defence. Undisputedly, the documents on which the Corporation relied upon were not supplied to the petitioner, which, in fact, had led to serious defect and has made the order of termination of agency vulnerable.

7. So far as Regulation 8 is concerned, undisputedly, certain inquiries are required to be made by the agent, but, in a given case, where the agent comes and says that he has no information about the ailments, etc. then, the burden would be on the other side to show or prove that the miscreant or wrongdoer had the information. In the present case, undisputedly, no evidence is forthcoming to prove that the petitioner had the personal knowledge about the earlier withdrawal of the proposal or the ailments suffered by the petitioner.

8. So far as the cessation of the agency is concerned, the same should not detain this Court unnecessarily because if the order passed in the year 1993 is set aside or if there was no such order, then, the petitioner could always make an application for renewal of the agency. Even otherwise, the termination on such ground would amount to a stigma and the petitioner would always suffer civil consequences because the post insurance commissions would also not be paid to him.

9. Shri Biju Joshi, learned Counsel for the petitioner, submits that in case the order terminating the agency is quashed, then, the respondent be given liberty to proceed with the inquiry afresh. In the opinion of this Court, such liberty would be an exercise in futility because from the admission made by the respondent-Corporation, it is clear that they do not have any file and therefore, they are not in a position to provide the copy of the evidence to the petitioner. Even otherwise, it would be absolutely inappropriate and unjust to give liberty in favour of the respondents after a lapse of fourteen years. If the respondents were really serious about all this, then, on service of notice in the year 1993-94, they could have straightway come to the Court and said that they are ready and willing to make a fresh inquiry.

10. Taking into consideration the arguments and for the reasons aforesaid, I hereby hold that the order dated 23rd February, 1984 passed

by the Senior Divisional Manager, Life Insurance Corporation of India Limited cannot be allowed to stand. It deserves to and is, accordingly, quashed. In view of this order, the petitioner certainly would be entitled to make an application for renewal of the agency. Rule is made absolute. No costs.

[R.S.Garg, J.]

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